Retlaw Broadcasting Co., a subsidiary of Retlaw Enterprises, Inc. d/b/a KIMA–TV *and* American Federation of Television & Radio Artists, Seattle Local. Case 19–CA–24444

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On May 20, 1997, Administrative Law Judge Frederick C. Herzog issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions as modified,[3] to amend the remedy, to adopt the recommended Order as modified below,[4] and to substitute the attached notice for that of the administrative law judge.

AMENDED REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act by refusing to meet and bargain with the Union as the exclusive representative of its employees in an appropriate unit, we adopt the judge's recommendation and order the Respondent to cease and desist from engaging in such unfair labor practices and, on request, to bargain collectively with the Union concerning wages, hours, and terms and conditions of employment and, if such an agreement is reached, to embody such understanding in a signed agreement. Contrary to the judge, however, we do not find that the Respondent should additionally be required to reimburse the General Counsel and the Union for the costs they incurred in the investigation, preparation, presentation, and conduct of this case.

It is well settled that the assessment of costs against a respondent is an extraordinary remedy not ordinarily imposed. *Heck's, Inc.*, 215 NLRB 765 (1974); *Tiidee Products*, 194 NLRB 1234 (1972), enfd. as modified 502 F.2d 349 (D.C. Cir. 1974), cert. denied 421 U.S. 791 (1975). As long as the defenses raised by the respondent are ''debatable'' rather than ''frivolous,'' this remedy is inappropriate, even where the Respondent has engaged in ''clearly aggravated and pervasive misconduct,'' or a ''flagrant repetition of conduct previously found unlawful.'' *Mt. Airy Psychiatric Center*, 230 NLRB 668, 681 (1977). Under this standard, we find that extraordinary remedies are not warranted in this case.

Initially, we note that, in a decision not included in bound volumes, the Board previously found that the Respondent had violated Section 8(a)(5) by dealing directly with unit employees and by refusing to provide the Union with requested information. The General Counsel concedes, however, that in 1992 the parties reached a valid impasse in negotiations for an initial contract and that the Respondent thereafter lawfully implemented its final bargaining proposal. Although the General Counsel alleges that the impasse subsequently was broken and that, since November 1995, the Respondent has unlawfully refused to meet and bargain with the Union, the Respondent affirmatively pled in its answer, and introduced some evidence at the hearing, that the impasse persists. While we have found that the Respondent did not prove this defense, we find that its arguments are not so insubstantial or unsupported as to be patently frivolous. *Nappe-Babcock Co.*, 245 NLRB 20, 22 fn. 7 (1979); *Ameri-Crete Ready Mix Corp.*, 207 NLRB 509 fn. 3 (1973); Cf. *Care Manor of Farmington*, 318 NLRB 330 (1995).

Additionally, we do not find that the Respondent's failure to be represented by counsel at the hearing warrants the imposition of an extraordinary remedy. There is no requirement that parties be represented by counsel in Board proceedings. And, unlike the previous Board hearing (which resulted in the earlier decision) where neither the Respondent nor its counsel appeared or participated, here its vice president attended the hearing and presented some testimony relevant to the Respondent's ''impasse'' defense.[5]

In these circumstances, we find that extraordinary remedies are not warranted and that traditional rem-

[1] The Respondent excepts to the judge's failure to consider exhibits that it had appended to its post-hearing brief. The Respondent argues that, contrary to the judge's findings, these exhibits had been stipulated into evidence. Although we agree with the Respondent that several of the appended exhibits were in evidence (and, indeed, were properly considered by the judge), we adopt the judge insofar as he found that R. Exhs. A, B, C, D, E, and J to its post-hearing brief were not in the record and were properly not considered.

[2] In adopting the judge's finding that the Respondent rejected the Union's December 28, 1994 request for assistance in compiling the bargaining files, we do not rely on his characterization of the Respondent's reply as reflecting ''evident scorn.''

[3] Because the violation alleged in the complaint, and litigated by the General Counsel at the hearing, was that the Respondent failed to bargain in good faith with the Union since November 1995, we modify par. 5 of the Conclusions of Law to read: ''Since on or about November 1995, by failing and refusing to meet and bargain collectively with the Union about the subjects relating to the wages and other terms and conditions of employment of unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.''

[4] The recommended Order is modified in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996), and to reflect the amended remedy, discussed below.

[5] Accordingly we do not adopt the judge's finding that the ''the Respondent chose not to present any evidence at trial.''

edies are adequate to remedy the Respondent's unfair labor practices.[6]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Retlaw Broadcasting Co., a subsidiary of Retlaw Enterprises, Inc., d/b/a KIMA–TV, Yakima, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

''(b) Within 14 days after service by the Region, post at is facility in Yakima, Washington, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall by posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 14, 1995.''

2. Substitute the following for paragraph 2(c).

''(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.''

3. Delete paragraph 2(d).

4. Substitute the attached notice for that of the administrative law judge.

[6] Because we have determined, on the merits, that the Respondent is not liable for costs, we do not reach the Respondent's ''due process'' argument.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to bargain collectively in good faith with American Federation of Television & Radio Artists, Seattle Local, in the following unit which is appropriate for the purposes of collective bargaining:

INCLUDED: All full time and part time news department employees, operation/programming department employees, and technical/engineering department employees employed at the respondent's KIMA–TV Yakima, Washington, location.

EXCLUDED: All office employees, including receptionist, sales department employees including traffic assistants, janitors, guards, and supervisors as defined in the Act.

WE WILL, on request, recognize and bargain collectively in good faith with the above-named labor organization as the exclusive collective-bargaining representative of our employees in the unit described above with respect to wages, hours, and working conditions of all the employees in the above described unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

RETLAW BROADCASTING CO., A SUBSIDIARY OF RETLAW ENTERPRISES, INC., D/B/A KIMA-TV

George I. Hamano, Esq., for the General Counsel.

Thomas E. Campagne, Esq. (Thomas E. Campagne & Associates),[1] and *Ken Messer*, of Yakima, Washington, for the Respondent.

John F. Sandifer, of Seattle, Washington, for the Charging Party.

DECISION

STATEMENT OF THE CASE

FREDERICK C. HERZOG, Administrative Law Judge. This case was heard by me in Yakima, Washington, on September 17, 1996, and is based on a charge filed by American Federation of Television & Radio Artists, Seattle Local (the Union) on or about March 21, 1996, alleging generally that Retlaw Broadcasting Co., a subsidiary of Retlaw Enterprises, Inc., d/b/a KIMA-TV (the Respondent) committed certain

[1] Attorney Campagne entered his appearance on behalf of the Respondent. However, he did not present himself at trial. Instead, the Respondent's vice president and general manager, Ken Messer, appeared.

violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). On May 1, 1996, the Regional Director for Region 19 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging violations of Section 8(a)(1) and (5) of the Act. The Respondent thereafter filed a timely answer to the allegations contained within the complaint, denying all wrongdoing and setting forth a number of affirmative defenses.

All parties appeared at the hearing,[2] and were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally and file briefs. Based on the record, my consideration of the briefs filed by counsel for the General Counsel and counsel for the Respondent,[3] and my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, and the answer admits, that the Respondent is a Washington state corporation with an office and place of business in Yakima, Washington, where at all times material it has been engaged in the business of operating KIMA television station; that during the 12 months preceding the issuance of the complaint, a representative period, in the course and conduct of its business operations, it had gross sales of goods and services that were valued at in excess of $500,000; that it sold and shipped goods or provided services from its facilities within the State of Washington to customers outside the State, or sold and shipped goods and provided services to customers within the State, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value of in excess of $50,000; and that it purchased and caused to be transferred and delivered to its facilities within the State of Washington, goods and materials valued in excess of $50,000 directly from sources outside the State, or from suppliers within the State which in turn obtained such goods and materials directly from sources outside the State.

Accordingly, I find and conclude that the Respondent is now, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS

The complaint alleges, the answer admits, and I find that the Union and the American Federation of Television & Radio Artists, AFL–CIO, National Broadcast Department, are now, and at all times material have been, labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *General Background*

The complaint alleges, and the answer admits, that on March 30, 1990, the Union was certified, and that on November 22, 1991, the Union was recertified, as the exclusive collective-bargaining representative of the employees in a unit of the Respondent's employees described as:

> Included: All full time and part time news department employees, operation/programming department employees, and technical/engineering department employees employed by the Respondent's KIMA-TV Yakima, Washington, location.
>
> Excluded: All office clerical employees, including receptionist, sales department employees including traffic assistants , janitors, guards and supervisors as defined in the Act.

The answer further admits that the Union is now, and at all times since March 30, 1990, has been, the exclusive collective-bargaining representative of the employees in the unit described above.

Counsel for the General Counsel contends that since December 7, 1994, the Union has been trying unsuccessfully to get the Respondent to resume negotiations. The Respondent, on the other hand, contends that it has not breached any duty to negotiate because there has been an impasse in negotiations in effect since before December 7, 1994, and the Union has failed to make any substantial change in the circumstances of the bargaining, so as to break the impasse.

B. *The Issues*

The initial issue here is whether or not the impasse which existed at the time that the Union sought to renew negotiations between the parties was broken by virtue of events and/or changed circumstances.

If so, the secondary issue here is whether or not the Respondent's actions warrant the imposition of an extraordinary remedy, and, if so, what that remedy is.

C. *Facts*

In April 1994, Administrative Law Judge George Christensen conducted a trial involving these same parties. At issue there was whether or not the Respondent had violated Section 8(a)(1) and (5) of the Act by bypassing the Union, dealing directly with unit employees, entering into or

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[2] See preceding footnote.

[3] The Respondent's posttrial brief was filed by Campagne. In its brief, the Respondent argues the issues concerning the bargaining history, the impasse, the postimpasse contacts between the Union and the Respondent, the Union's proposal of May 1, 1994, and other issues. Additionally, the Respondent's brief discusses a number of factual issues, and attempts to support its views of those facts by means of certain documents attached to the brief, denominated as ''Exhibits.''

I note, however, that the Respondent chose not to present evidence at trial.

I do not know the reasons underlying the Respondent's choice not to present its evidence at trial.

Accordingly, I have determined that I should, and I do, reject its effort to present evidence of facts supporting its point of view by the simple expedient of attaching it to its brief as an ''Exhibit.'' Thus, all my determinations of fact are based on the evidence presented at trial, and the stipulations entered into there. Where the Respondent argues that no events occurred sufficient to have broken the impasse between the parties, I look only to the evidence presented at trial, and not to the documents presented as ''Exhibits,'' and which are attached to the Respondent's brief. In my opinion, they do not constitute ''evidence.''

Of course, as stated at trial, I have taken official notice of certain events which preceded this trial, but which are part of the Board's official records.

amending agreements with those employees, and failing to supply requested information to the Union.

Judge Christensen found that the Respondent violated the Act by dealing directly with employees and by failing to furnish information to the Union. His decision was adopted by the Board in an unpublished order dated November 2, 1994.

The current complaint alleges that the Respondent has since engaged in dilatory tactics by refusing to meet with the Union at reasonable times for the purposes of collective bargaining, after having initially indicated willingness to meet with the Union.

Counsel for the General Counsel concedes that, at the outset of this fact situation, an impasse existed in the negotiations between the parties.

Shortly after the Board's decision referred to above, Anthony Hazapis, the Union's executive director, wrote to the Respondent on November 10, 1994, to confirm receipt of the Respondent's letter of October 31, 1994, in which the Respondent indicated that it would comply with the Board's decision. Hazapis' letter went on to state, ''[P]lease accept this letter as AFTRA's formal demand to collectively bargain a labor agreement with [Respondent].''

On December 7, 1994, the Respondent wrote back, accepting the demand to bargain, and commenting that,

> Mr. Campagne and I agree with you that it would be a good idea to start our collective bargaining because, after all, the ''impasse/unilaterally implemented'' employer proposal runs out sometime in approximately October of 1995.

The Respondent's letter also set out the Respondent's request of the Union for a ''full and complete'' proposed collective-bargaining proposal.

Later that month, due to an illness suffered by Hazapis, who had conducted all of the Union's negotiations with the Respondent in the past, John Sandifer became the Union's new executive director. As such, Sandifer also took over the duty of negotiating with the Respondent. Sandifer wrote to the Respondent to advise of the illness of Hazapis, and asked, due to his personal unfamiliarity with the past progress of negotiations, for assistance in learning what issues remained between the parties.

The Respondent replied with evident scorn for Sandifer's request, and stating that the Union should do its own work.

Sandifer responded to acknowledge the Respondent's response, but reminded the Respondent that it would take some time for him to become knowledgeable concerning the state of negotiations.

On March 13, 1995, the Respondent wrote that it was contemplating making changes in its retirement plans, by merging them into one plan.

On April 7, 1995, Sandifer advised the Respondent of his progress in preparing for negotiations. In essence, Sandifer stated that he'd made great progress but that he'd need more time to prepare.

Nevertheless, on May 1, 1995, as the Respondent had demanded, Sandifer sent the Respondent a full contract proposal. This proposal contained several concessions by the Union, including some on wages, personal service contracts, and union security.

By late June, Hazapis felt able to resume participation in the negotiations, and wrote the Respondent to so advise. Receiving no response, he wrote again on August 21, 1995, complaining of the lack of response and again requesting negotiations.

On September 5, 1995, Sandifer wrote to the Respondent complaining that there had been no response to the repeated requests by the Union for bargaining, and inquiring about the lack of response to the Union's proposal of May 1, 1995.

On September 8, 1995, the personal assistant to the Respondent's attorney acknowledged receipt of the Union's letters, but also stated that the Respondent's attorney had been too busy to respond.

The following week various officials of the Respondent met together and decided that the Union's May 1 proposal was essentially the same as that which preceded the impasse.

On November 14, 1995, Sandifer again talked with the attorney's personal assistant, and requested dates for bargaining. She begged off, citing business, and asked that he call back sometime later.

However, also on November 14, 1995, the Respondent's attorney advised by letter that he had been informed by his assistant of the Union's request to bargain on December 7 or 8. He stated that either date was agreeable with him.

Though he promised to get back and confirm in the next week or so, he never did so.

On November 27, 1995, Sandifer wrote to remind the attorney of the proposed December dates, and to complain of not having heard from him. Sandifer received no response to this letter.

On January 30, 1996, the Union, via Sandifer, sent another such letter to the Respondent's attorney. No response was ever received.

D. *Discussion and Conclusions*

Since then, the Union has insisted that no impasse any longer exists, and that it wishes to resume or continue negotiations.

The Respondent, of course, contends that the impasse which predated this case still continues, and that nothing in the Union's actions changes that result.

My view of these facts convinces me that the Union's view is the correct one.

In reaching this conclusion, I am mindful that the Board has held that in order to break an impasse, a union's ''offer'' must be sufficient to enable a determination of whether or not it represents ''any change, much less a substantial change, from the [u]ion's prior position in negotiations with the [r]espondent.'' *Holiday Inn, Downtown-New Haven*, 300 NLRB 774 (1990). Thus, I do not view it as dispositive that the Union has, as I view the Union's various communications to have done, expressed a willingness to be reasonable and flexible. Mere ''willingness'' is not enough.

Therefore, I accept that it is insufficient that a union merely adopts window dressing in order to compel an employer to resume negotiations. As the Board states, the Union must propose a ''substantial change.''

Impasse does not destroy the collective-bargaining relationship. Instead, a genuine impasse merely suspends the duty to bargain over the subject matter of the impasse until changes in circumstances indicate that an agreement may be possible.

An impasse is not the end of collective bargaining. The Supreme Court has stated,

> As a recurring feature in the bargaining process, impasse is only a temporary deadlock or hiatus in negotiations ''which in almost all cases is eventually broken either through a change of mind or the application of economic force.''

Historically, the Board has not required major changes in circumstances to find that an impasse has been broken. Mindful of the Act's policy of reducing industrial strife through promoting collective bargaining directed toward reaching an agreement between the parties, the Board has held that a substantial change in bargaining position will revive the employer's obligation to bargain over the subject of the impasse.

What are the factors that may be said to break an impasse?

A number of factors must be considered in determining whether circumstances have changed sufficiently to break a lawful impasse and revive an employer's obligation to bargain over the subjects of the impasse. The Court of Appeals for the Fifth Circuit, in enforcing the Board's finding that impasse had been broken, summarized these factors in the following manner in *Gulf States Manfacturers v. NLRB*:

> Anything that creates a new possibility of fruitful discussion (even if it does not create a likelihood of agreement) breaks an impasse: a strike may; . . . so may bargaining concessions, implied or explicit; . . . the mere passage of time may also be relevant. [Citations omitted.]

For the reasons stated below, I find that circumstances here have changed sufficiently since impasse was reached to renew the Respondent's obligation to bargain with the Union. I further conclude that the Respondent's failure to resume bargaining with the Union violated Section 8(a)(5) of the Act.

In the instant case, I note that there had been much time that had passed between attempts to renew negotiations and the onset of impasse.

I also note that the Union had secured a new negotiator since the time that impasse had occurred.

I note that the new negotiator had proposed resumption of negotiations with the Respondent and that the Respondent had itself noted that circumstances seemed ripe for resumption of negotiations, inasmuch as certain changes instituted by the Respondent were due to expire in the coming year.

I note that the Union sought to resume negotiations for a long period of time, and that when it sent it's ''complete proposal'' to the Respondent that its proposal called for certain changes in the total economic package, including the wage proposal.

Finally, I note that the Respondent never objected to the Union's presentation of an alleged entire new proposal. If, as it claimed, the Union's proposal was ''nothing new,'' why did it never advance that claim to the Union? Why was there no objection?

Taking these factors into consideration as a whole leads me to conclude that the impasse was broken sufficient to require that the Respondent honor its duty to bargain with the Union. The Board has held that such factors may well lead to the conclusion that I reach here that the impasse has been sufficiently broken. *Airflow Research & Mfg.*, 320 NLRB 861 (1996).

Stated differently, I find and conclude that the Union's various demands for bargaining were prefaced by the requisite changes in circumstances to break the previous impasse in negotiations, and that there is no excuse for the Respondent's failure and refusal to respond positively to the Union's numerous requests to bargain.

Accordingly, I find and conclude, as advanced and argued by counsel for the General Counsel, that the Respondent's actions, in failing and refusing to respond to the Union's requests to resume bargaining, constituted violations of Section 8(a)(1) and (5) of the Act, and shall order an appropriate remedy.

Here, the General Counsel requests that I order the imposition of an extraordinary remedy. Counsel for the General Counsel's request is premised on the claim that the Respondent's actions have occasioned ''frivolous litigation.''

Careful consideration leads me to agree with the viewpoint of counsel for the General Counsel.

The advancement of a claim that there has been no meaningful change in the circumstances of negotiations must be at least minimally supported by facts.

It is of little importance whether those facts are strong, or whether they are not so strong, so long as they are advanced in good faith.

Here, as pointed out by counsel for the General Counsel, we have been left to guesswork in judging the good or bad faith of the Respondent in it's defenses. Moreover, this is not the first time that he has done so. Here, just as in the previous case, the Respondent's attorney failed to even attend the proceedings. In my view, such conduct amounts to ''frivolous litigation'' and I shall order the appropriate remedy. *Tiidee Products*, 194 NLRB 1234 (1972), and *Heck's, Inc*., 215 NLRB 765 (1974).

In *Tiidee*, the Board said, ''Accordingly, in order to discourage future frivolous litigation, to effectuate the policies of the Act, and to serve the public interest we find that it would be just and proper to order the Respondent to reimburse the Board and the Union for their expenses incurred in the investigation, preparation, presentation, and conduct of these cases, including the following costs and expenses incurred in both the Board and court proceedings: reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diem, and other reasonable costs and expenses. Accordingly, we shall order the Respondent to pay to the Board and the Union the abovementioned litigation costs and expenses.'' I shall enter an identical Order here.

CONCLUSIONS OF LAW

1. The Respondent, Retlaw Broadcasting Co., a subsidiary of Retlaw Enterprises, Inc., d/b/a KIMA-TV, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, American Federation of Television & Radio Artists, Seattle Local, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All full time and part time news department employees, operation/programming department em-

ployees, and technical/engineering department employees employed by the Respondent's KIMA-TV Yakima, Washington, location.

Excluded: All office clerical employees, including receptionist, sales department employees including traffic assistants , janitors, guards and supervisors as defined in the Act.

4. Since March 30, 1990, the Union has been the certified as the exclusive bargaining representative of all the employees within the above-described appropriate unit and since that time has been the exclusive collective-bargaining representative of the unit within the meaning of Section 9(a) of the Act.

5. Since on or about December 7, 1994, by failing and refusing to meet and bargain collectively with the Union about subjects relating to the wages and other terms and conditions of employment of unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act by refusing to meet and bargain with the Union as the exclusive representative of its employees in an appropriate unit, I shall order that the Respondent cease and desist from engaging in such unfair labor practices and, on request, bargain collectively with the Union concerning wages, hours, and terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

Having found that the Respondent has engaged in frivolous litigation I shall order that Respondent pay to the Board and the Union the costs and expenses incurred by them in the investigation, preparation, presentation, and conduct of this case, such costs to be determined at the compliance stage of these proceedings.

ORDER

The Respondent, Retlaw Broadcasting Co., a subsidiary of Retlaw Enterprises, Inc., d/b/a KIMA-TV, Yakima, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain with American Federation of Television & Radio Artists, Seattle Local as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

The following constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full time and part time news department employees, operation/programming department employees, and technical/engineering department employees employed by the Respondent's KIMA-TV Yakima, Washington, location.

Excluded: All office clerical employees, including receptionist, sales department employees including traffic assistants, janitors, guards and supervisors as defined in the Act.

(b) Post at its facility in Yakima, Washington, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

(d) Pay to the Board and the Union the costs and expenses incurred by them in the investigation, preparation, presentation, and conduct of this case, such costs to be determined at the compliance stage of these proceedings.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''